

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
HELENA DIVISION**

TYRONE B. HILL  
Reg. #71015-004

PLAINTIFF

V.

2:07CV00080 SWW/JFF

LINDA SANDERS *et al.*

DEFENDANTS

**PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

**INSTRUCTIONS**

The following recommended disposition has been sent to United States District Court Judge Susan Webber Wright. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District

Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court  
Eastern District of Arkansas  
600 West Capitol Avenue, Suite 402  
Little Rock, AR 72201-3325

### **DISPOSITION**

Plaintiff filed this cause of action pursuant to 28 U.S.C. § 1331 and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) on June 15, 2007 (docket entry #2). Plaintiff remains in the custody of the Federal Bureau of Prisons and is currently held at the Federal Correctional Institution in Big Spring, Texas. *In forma pauperis* status was granted to Plaintiff and service ordered on Defendants. At the time of the filing of the Complaint, Plaintiff was at the FCI in Big Spring, but on September 25, 2007, he notified the Court that he was being moved to the Federal Detention Center in Miami, Florida until approximately October 15, 2007 (docket entry #17).

Defendants filed a Motion to Dismiss (docket entry #21) on November 13, 2007, arguing that the service on the Defendants was insufficient, that the Court lacked personal jurisdiction over Defendant Maldonado, that the Defendants were entitled to immunity from the claims raised against

them, and that the Complaint failed to state a claim against them.

The Court, being responsible for the execution of service on the parties in this action, directed that the Clerk of the Court again prepare summonses for the Defendants, and it appears that the named Defendants have all been properly served at this time. However, the Court also, on November 15, 2007, directed that Plaintiff file a Response to the Defendants' Motion to Dismiss, within thirty (30) days of the entry date of that Order. Plaintiff was also cautioned of his responsibilities under Local Rule 5.5(c)(2), which provides that if any communication from the Court to a *pro se* litigant is not responded to within thirty days, the case may be dismissed without prejudice. *See* docket entry # 23.

Plaintiff did not file a Response to that Motion within thirty days, but, on January 8, 2008, he did file a Notice of Change of Address that notified the Court that he had been returned to Big Spring, Texas (docket entry #38). In an abundance of caution, the Court mailed to Plaintiff at the Big Spring facility another copy of the pending Motion and the Brief in Support and granted him an additional fifteen days in which to file his Response. Again, Plaintiff was cautioned of the requirements of Rule 5.5(c)(2).

None of the mail addressed to Plaintiff has been returned as undeliverable, suggesting that he has received the Orders and other pleadings and documents, but Plaintiff has failed to file any Response to the pending Motion to Dismiss despite the many extensions that the Court has *sua sponte* granted to him. Under these circumstances, the undersigned recommends that this case be dismissed without prejudice for failure to comply with Local Rule 5.5(c)(2) and failure to prosecute. *See Miller v. Benson*, 51 F.3d 166, 168 (8<sup>th</sup> Cir. 1995) ("District courts have inherent power to dismiss *sua sponte* a case for failure to prosecute, and we review the exercise of this power for abuse

of discretion.”)

**CONCLUSION**

IT IS THEREFORE RECOMMENDED that Plaintiff’s cause of action be dismissed without prejudice, and all pending motions be DENIED AS MOOT.

. DATED this 11<sup>th</sup> day of February, 2008.

A handwritten signature in cursive script, appearing to read "John D. Foster, Jr.", written in dark ink.

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UNITED STATES MAGISTRATE JUDGE